



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/160902

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 25, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Human Service Department in regard to Medical Assistance, a hearing was held on October 30, 2014, at Racine, Wisconsin.

The issue for determination is whether the Racine County Human Service Department (the agency) correctly terminated the Petitioner's BadgerCare+ benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Rhonda Kramer, Lead Economic Support Specialist  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On September 18, 2014, the agency sent the Petitioner a notice indicating that as of October 1, 2014, he would no longer be enrolled in the BadgerCare+ program, because his income is over the program limit. (Exhibit 9)

3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 15, 2014. (Exhibit 1)
4. At the time in question, the Petitioner worked 40 hours per week, earning \$13.185 per hour. He was paid bi-weekly. (Exhibit 1)
5. Petitioner's tax household consists of one person – himself. (Testimony of Ms. Kramer)

### **DISCUSSION**

BadgerCare Plus (BC+) is a state/federal program that provides health coverage for Wisconsin families. *BadgerCare + Eligibility Handbook (BEH) §1.1.1.*

Effective April 1, 2014, an adult must have household income below 100% the Federal Poverty Level, in order to be eligible for the BadgerCare+ health plan. *BEH §16.1* Prior to this, the income limit was 200% of FPL. *Id.*

It is the agency's contention that Petitioner's household income exceeds 100% of the Federal Poverty Level and as such, he is not eligible for benefits.

For BadgerCare+ purposes, only actual gross monthly income is used. Estimated amounts using the 4.3 weekly pay period or 2.15 bi-weekly pay period multipliers are NOT used. *Process Help §16.4.1*; see also *Ops Memo 01-01*

On September 15, 2014, the Petitioner submitted an EVFE indicating that he was working 40 hours per week and earning \$13.185 per hour. (Exhibit 3) The EVFE did not list any pre-tax deductions from income. Thus, Petitioner's income worked out to be:

$$40 \text{ Hours} \times \$13.185/\text{hour} = \$527.40 \text{ per week}$$

$$\$527.40 \times 4 \text{ weeks per month} = \$2109.60 \text{ per month.}$$

100% of FPL for an assistance group size of one is \$972.50. *BEH §50.1.* Petitioner's income of \$2109.60 per month was over the \$972.50 - 100% FPL income limit. As such, the agency correctly ended his BadgerCare+ benefits.

The Petitioner argues that his income stream has been intermittent throughout the year and as such, the agency should be averaging his income. The Petitioner indicated that his income has been intermittent, because he has difficulty earning money as a freelance writer; his part time job/s have been short lived and he was recently laid off from his last job.

"If neither the amount nor the frequency [of pay] is predictable, do not average; count income only for the month in which it is received." *BEH §16.6* Even if the agency looked at the Petitioner's income over the entire year, it could not average his income, because there is no way to predict when the Petitioner will sell his writing, get a job or lose a job. The agency would be required to count his income in the month that it is received.

### **CONCLUSIONS OF LAW**

The agency correctly terminated the Petitioner's BadgerCare+ benefits, effective October 1, 2014.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of November, 2014

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 25, 2014.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability